

**From:** [PETERSON Jenn L](mailto:PETERSON.Jenn.L)  
**To:** [Eric Blischke/R10/USEPA/US@EPA](mailto:Eric.Blischke/R10/USEPA/US@EPA)  
**Subject:** RE: PH Lamprey Assessment  
**Date:** 05/12/2008 02:32 PM

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Yea, I know - mostly because it doesn't explicitly state that in rule. However, there are multiple state sites where sensitive species were assessed at the individual level.

-Jennifer

-----Original Message-----

From: Blischke.Eric@epamail.epa.gov [mailto:Blischke.Eric@epamail.epa.gov]  
Sent: Monday, May 12, 2008 1:29 PM  
To: PETERSON Jenn L  
Subject: Re: PH Lamprey Assessment

Jennifer, just so you are aware, Kurt Burkholder and Jim Anderson have confirmed that listing as a "state sensitive species" does not qualify for evaluation at the individual level under state clean-up law.

Eric

Jeremy\_Buck@fws.  
gov

05/07/2008 12:18  
PM

To  
"PETERSON Jenn L"  
<PETERSON.Jenn@deq.state.or.us>  
cc  
"ANDERSON Jim M"  
<ANDERSON.Jim@deq.state.or.us>,  
Eric Blischke/R10/USEPA/US@EPA  
Subject  
Re: PH Lamprey Assessment

Thanks Jennifer. Eric and I have been discussing the language in the Programmatic Workplan, and the LWG does have some confusing language that is inconsistent in the Workplan when they define special status species in a couple of places (e.g., see Section 2.1.1, Page 9: "Species of special status (i.e., federally listed threatened, endangered, candidate and proposed species, and state listed species) are the only receptors that will be assessed at the individual level, as mandated by EPA guidance). This implies here that only state-listed species will be evaluated, which does not necessarily include state sensitive species, whereas in section 2.4 they are more clear about including state sensitive species.

I don't remember the "Comprehensive Synopsis of Approaches and Methods" document. Do you know if this was a final document where the final approach was agreed to by EPA and LWG?

Thanks-j

"PETERSON Jenn L"  
<PETERSON.Jenn@deq.state.or.  
us>

05/07/2008 11:49 AM

To  
"ANDERSON Jim M"  
<ANDERSON.Jim@deq.state.or.us  
>,  
<Blischke.Eric@epamail.epa.gov>  
v>  
cc  
<Jeremy\_Buck@fws.gov>  
Subject  
PH Lamprey Assessment

Here is some stuff I pulled together a while back on the lamprey issue, just fyi-

I pulled together what I found on lamprey in regards to LWG's past documents on whether they should be assessed at the population or individual level.

1. The Programmatic Workplan dated 3/31/03 does describe lamprey as being assessed at the

individual level (special status / NOEC level). Page 44, Section 2.4 in Appendix C describes special-status species. These species are described as both the federal and state proposed and candidate species T&E species and sensitive species identified by the state of Oregon. These species are shown in Table 2-8, and this table includes lamprey in addition to other T&E and sensitive species such as bald eagle, red-legged frogs, painted turtles, and the salmonid species. The language used here links to the Table 5-3 "The DQO process for the ecological risk evaluation: Fish". The decision rule showed here (#5) says "If the COPC concentration using the 95th UCL or maximum concentration is greater than the NOEC in the special-status species assessment, the COPC will be retained for further evaluation".

2. Comprehensive Synopsis of Approaches and Methods, June 28, 2004 clearly describes the lamprey assessment at the individual level. Page 55, Section 6.3 states an individual assessment for species of special concern, of which lamprey are identified. Table 2-2, Page 70 states "Exceedence of effects level assumed to be protective of individuals indicates risk". Page 6, Section 2.2.3 states: "All selected fish receptors will be assessed at the population level, with the exception of species of special concern (i.e., juvenile chinook salmon and Pacific lamprey ammoncoetes), which will be assessed at the individual level".

3. The Ecological Preliminary Risk Evaluation (Sept. 9, 2005) does not evaluate lamprey so they are not mentioned specifically, but they refer back to the Programmatic Workplan.

-Jennifer

Some DEQ Rule Language:  
Overview

The Endangered Species Act (ESA) [1973 16 USC 1531 to 1543] provides for the protection of species of fish, wildlife and plants that are designated as becoming endangered or threatened to become endangered. The act prohibits persons subject to the jurisdiction of the United States from committing specific acts. Under the ESA, the general prohibition states that persons may not take species of fish, wildlife or plants so listed. "Take" is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct within the United States. Further, "taking" includes destruction or significant alteration of habitat on which protected species depend.

Objectives of the ESA are to conserve endangered or threatened species and provide a means to conserve the ecosystem upon which these species depend. (The ultimate goal of the ESA is to make itself obsolete through conservation and by returning species to levels at which protective statutes are no longer needed.) Conservation involves the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which these measures are no longer necessary. [§ 1532(3)]

Further, a species may be listed as endangered or threatened if the species is jeopardized by the present or threatened destruction, modification or curtailment of the species' habitat or range; over-utilization for commercial, recreational, scientific or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms, or other factors affecting the species' continued existence. [§ 1533(A)(1)] In addition, any efforts by the state or foreign government to protect the species must be considered if a species is to be listed. [§ 1533(D)(1)(A)]

635-425-0010

Definitions

For the purposes of OAR 635-425-0000 through 635-425-0050 only:

4) "Endangered Species" means:

(a) Any native fish or wildlife species determined by the Fish and Wildlife Commission to be in danger of extinction throughout any significant portion of its range within the state; or

(b) Any native fish or wildlife species listed as an endangered species pursuant to the federal Endangered Species Act of 1973 (PL 93-205, 16 USC § 1531), as amended.

(13) "Sensitive Species" refers to fish or wildlife species, subspecies, or populations that are subject to a decline in number of sufficient magnitude to qualify their listing as threatened due to loss in quantity or quality of habitat or other factors.

(14) "Threatened Species" means:

(a) Any native fish or wildlife species the Fish and Wildlife Commission has determined is likely to become an endangered species within the foreseeable future throughout any significant portion of its range within this state; or

(b) Any native fish or wildlife species listed as a threatened species pursuant to the federal Endangered Species Act of 1973 (PL 93-205, 16 USC § 1531), as amended